

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN EARL CAMPBELL,

Plaintiff,

vs.

No. C-05-05434 MJJ

NATIONAL RAILROAD PASSENGER  
CORPORATION, et al.,

**COPY**

Defendants.

-----/

DEPOSITION OF STEVEN EDWARD SHELTON

April 4, 2007

PATRICIA CALLAHAN & ASSOCIATES, INC.  
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Reported by:  
DEBORAH A. PIERSON  
CSR NO. 7988

**EXHIBIT F**

PATRICIA CALLAHAN & ASSOCIATES

1 BE IT REMEMBERED THAT, pursuant to Subpoena and  
2 Notice of Taking Deposition, and on Tuesday, April 4,  
3 2007, commencing at the hour of 10:20 a.m. of the said  
4 day, at the law offices of PRICE & ASSOCIATES,  
5 1611 Telegraph Avenue, Suite 1450, Oakland, California,  
6 before me, DEBORAH A. PIERSON, a Certified Shorthand  
7 Reporter, State of California, personally appeared  
8 STEVEN EDWARD SHELTON, a witness in the above-entitled  
9 court and cause, produced on behalf of the plaintiff  
10 therein, who, being by me first duly sworn, was then  
11 and there examined and interrogated by Attorney  
12 PAMELA Y. PRICE, representing the law offices of PRICE  
13 & ASSOCIATES, 1611 Telegraph Avenue, Suite 1450,  
14 Oakland, California, counsel for the plaintiff  
15 therein.  
16

17 APPEARANCES OF COUNSEL  
18

19 FOR PLAINTIFF:

20 PRICE & ASSOCIATES

21 BY: PAMELA Y. PRICE, ESQ.

22 1611 Telegraph Avenue, Suite 1450

23 Oakland, California 94612  
24  
25

1 A. Yes.

2 Q. Is there any reason you know of that we can't  
3 proceed with your deposition?

4 A. None whatsoever.

5 Q. Do you have any questions of me?

6 A. No, ma'am.

7 Q. What is your current position, Mr. Shelton?

8 A. My title is district superintendent for the Bay  
9 District.

10 Q. How long have you held that position?

11 A. Since March '04.

12 Q. Prior to that, what position did you hold?

13 A. I was an assistant superintendent for the  
14 long-haul operations.

15 Q. Where were you assigned?

16 A. Oakland.

17 Q. How long did you hold that position?

18 A. Two years, I believe.

19 Q. My information is that at some point in your  
20 career you were an engineer; is that correct?

21 A. Yes, ma'am. I still am.

22 Q. Okay. What positions have you held with Amtrak  
23 before you became a manager?

24 A. Locomotive engineer.

25 Q. When did you start that?

1 mean by that?

2 A. We have a discipline progression policy.

3 Depending on the severity of the rule violation, there  
4 would be different parameters involved.

5 Q. When you say you have a discipline progression  
6 policy -- and I'm sorry, I think I just misstated it,  
7 but tell me what you are referring to.

8 A. Generally, we look at discipline as a tool to  
9 change the behavior of an employee to, hopefully, get  
10 them back on track where they need to be.

11 If it's not extremely egregious, the first level  
12 would be a verbal, a counseling. The second could be a  
13 letter of counseling. Again, these are variables,  
14 depending on the severity of the violation. The third  
15 would generally be a suspension of three days or more.  
16 The fourth could be, depending, again, on the  
17 seriousness, a suspension, and the fifth generally  
18 would result in termination.

19 Q. Regardless of the seriousness?

20 A. No. I stated earlier, it would all depend on the  
21 severity of the incident.

22 Q. Is that policy in writing, as far as you know?

23 A. Yes. I believe it came under Mr. Ed Walker's  
24 signature.

25 Q. During the time Mr. Pruesser reported to you, was

1 segmented into sections. I'm operations. I don't have  
2 oversight or a great understanding of HR policy.

3 Q. All right. Do you participate in any way in the  
4 termination of any employees who work in operations?

5 A. Yes.

6 Q. In what way?

7 A. My signature would come on all termination  
8 letters.

9 Q. Do you have any other role, other than signing the  
10 letter?

11 A. Yes.

12 Q. What else do you do as part of the termination  
13 procedure?

14 A. Whenever there's a rule violation and it goes to  
15 an investigation, there's a transcript from the  
16 investigation itself. I would read the transcript.

17 Q. Anything else?

18 A. I would look at the previous history of the  
19 employee.

20 Q. What is your understanding as to why you are  
21 reading the transcript and looking at the employee's  
22 previous history?

23 A. Because, as I mentioned earlier, we sort of have  
24 the three-strike-you-are-out policy. They have what  
25 they call a Discipline Assessment Sheet that would come

1 to my desk. I would look at the Discipline Assessment  
2 Sheet and read the transcript, because I want to make  
3 sure it was done properly.

4 Q. Then after you review that information, what are  
5 you supposed to do?

6 A. Make my decision.

7 Q. Your decision to discipline the person?

8 A. Correct.

9 Q. Now, as part of your decision, you say you look at  
10 the Discipline Assessment Sheet?

11 A. Correct.

12 Q. What is the purpose of looking at that sheet?

13 A. To see if there are any prior rule violations.

14 Q. Do you have a memory of participating in  
15 John Campbell's termination?

16 A. No.

17 Q. You don't recall looking at the transcript of an  
18 investigatory hearing?

19 A. No.

20 Q. What is your understanding as to why Mr. Campbell  
21 was terminated?

22 MS. MAYLIN: Lack of foundation.

23 Go ahead.

24 MS. PRICE: Q. You can answer.

25 A. That he had more than three rule violations

1 leading up to his termination.

2 Q. Really? Have you looked at any documents to  
3 verify that understanding?

4 A. At the time it occurred.

5 Q. What did you look at at the time it occurred?

6 A. His Discipline Assessment Sheet.

7 Q. Have you looked at anything to prepare for today's  
8 deposition?

9 A. Only my discovery.

10 Q. When you say your "discovery," I have no idea what  
11 you are talking about. Can you be more specific?

12 MS. MAYLIN: Declaration.

13 THE WITNESS: Declaration, I'm sorry.

14 MS. PRICE: Q. What declaration is that?

15 A. I'm not quite sure how to answer that.

16 Q. Can you tell me the date of the declaration?

17 A. March 30th.

18 Q. Is this something you prepared recently --

19 A. Yes.

20 Q. -- or you looked at recently? All right.

21 Anything else?

22 A. No.

23 Q. Is it your recollection that the reason why you  
24 issued a letter terminating Mr. Campbell was because he  
25 had more than three violations?

1 MS. MAYLIN: Wait a minute. Objection.  
2 Lack of foundation.

3 MS. PRICE: Q. You can answer.

4 A. The reason, to the best of my recollection, was  
5 the policy supported termination.

6 Q. What policy is that?

7 A. The policy that if you have three or more major  
8 rule violations, most likely you are going to be  
9 terminated.

10 Q. Is that policy in writing?

11 A. Not that I've ever seen.

12 Q. Where did you learn about that policy?

13 A. Through human resources.

14 Q. Anyone in particular?

15 A. I can't recall.

16 Q. When did you first learn about that policy?

17 A. Probably 2002.

18 Q. Do you recall what the circumstances were?

19 A. No, ma'am.

20 Q. When you say "probably," that's kind of a buzz  
21 word that may suggest you are speculating.

22 Do you have a memory of how you learned of the  
23 policy?

24 A. No, ma'am.

25 Q. Have you ever applied this policy to anyone, other



1 regarding Mr. Campbell's termination?

2 A. I don't recall.

3 Q. Was it your practice to confer with Mr. Deely when  
4 you terminated the employment of an employee?

5 A. Yes.

6 Q. Why?

7 A. He's my boss.

8 Q. Was it your practice to document those  
9 conversations?

10 A. No.

11 MS. PRICE: Let's take a five-minute  
12 recess.

13 (A 15-minute recess was taken.)

14 MS. PRICE: Q. I'm going to show you  
15 what has been previously marked as Exhibit 5 to the  
16 deposition of Joe Deely. If you could take a look at  
17 that and let us know when you finish reviewing it.

18 For the record, I'm showing the witness a  
19 Discipline Assessment Sheet.

20 Is that the Discipline Assessment Sheet that you  
21 recall looking at for John Campbell.

22 A. Yes.

23 Q. Is that the only Discipline Assessment Sheet you  
24 looked at for Mr. Campbell, as far as you recall?

25 A. I don't recall this part being scratched out on

1 the original one, but I believe this is the only one I  
2 ever saw, yes, and I think a portion of it is missing,  
3 because it should have an NRPC number. That is missing  
4 on the bottom.

5 MS. PRICE: Mark the record, please.

6 Q. When you saw the document, it looked different  
7 than this; is that your recollection?

8 A. Yes. I don't recall the scratched out part, and I  
9 know there's more to the bottom of the form, because  
10 all of our forms are identified with an NRPC number,  
11 which means National Passenger Railroad form.

12 Q. Directing your attention to the part that is  
13 struck out, do you have any information or knowledge as  
14 to why that is struck out?

15 A. No, ma'am.

16 Q. You indicated that you recall Mr. Campbell had, I  
17 believe you said, about five prior rule violations at  
18 the time of the termination?

19 MS. MAYLIN: Lack of foundation.  
20 Misstates testimony.

21 MS. PRICE: Q. How many rule violations  
22 do you believe Mr. Campbell had at the time of his  
23 termination?

24 A. I would say, looking at this, three.

25 Q. Where do you see those reflected on this document?

1 A. 4/4/2000, unsafe switching, causing damage in  
2 yard. January 21st, '01, insubordination. Failure to  
3 follow instructions of yard foreman. 7/24/04, Service  
4 Standard Rule 5800, GCOR 1.47, 7.4 and AMT-3 Rule  
5 2.14.16.

6 Q. Are those the three violations that you relied  
7 upon to terminate Mr. Campbell?

8 MS. MAYLIN: Lack of foundation. Calls  
9 for speculation.

10 THE WITNESS: Yes.

11 MS. PRICE: Q. I see.

12 Do you know why the word "withdrawn" is typed on  
13 this form?

14 A. No, ma'am.

15 Q. At the time you reviewed the form, you are saying,  
16 as I understand your testimony, it was not lined out,  
17 correct?

18 A. That is my recollection, yes.

19 Q. What was your understanding of what it meant where  
20 it said "discipline assessed withdrawn"?

21 A. I really can't remember, because other than your  
22 refreshing my memory here, I can only see what I see.  
23 I don't remember back to the original form.

24 Q. Do you remember making any inquiry as to the  
25 meaning of the words "discipline assessed withdrawn"?

1 A. No, ma'am.

2 Q. Do you recall making any inquiry as to the  
3 circumstances that caused the April 2000 violation to  
4 have discipline waived?

5 A. No, ma'am.

6 Q. You indicated earlier that termination usually  
7 involves major rule violations; do you recall that  
8 testimony?

9 A. Yes.

10 Q. What is your understanding of what a major rule  
11 violation is?

12 A. Anything that could cause bodily harm, harm to our  
13 equipment or our employees.

14 Q. Are you aware of any employees that have received  
15 discipline waivers with no time for incidents that meet  
16 your definition of major rule violations who have not  
17 been terminated?

18 MS. MAYLIN: Wait a minute. Lack of  
19 foundation. Vague and ambiguous.

20 I think you are misusing the term "waiver," Pam.

21 But if you can understand the question and answer,  
22 go ahead.

23 THE WITNESS: I cannot recollect the  
24 specifics of any particular ones.

25 Would you like me to explain waiver?

1 we take a recess. I need to get the judge involved in  
2 this.

3 (A brief recess was taken.)

4 MS. PRICE: Q. Let me have you take a  
5 look at Exhibit Number 6 to the deposition of  
6 Mr. Deely.

7 A. On this, I was kind of thinking, as I walked out  
8 of the room, there was another rule violation on here,  
9 and I'm not sure, I believe the date was 2002, because  
10 I distinctly remember there was more than one.

11 There was sort of a theme to his rule violations,  
12 and switching seemed to be it, and I believe it was --  
13 I can't remember the month -- 2002, he had a rule  
14 violation as well, which is not indicated on here.

15 MS. PRICE: Q. I'm sorry. You are  
16 testifying --

17 For the record, the witness seems to be referring  
18 to Exhibit 5 to Mr. Deely's deposition, which is the  
19 Discipline Assessment Worksheet.

20 Q. And is it your testimony that some part of this  
21 document has been redacted or that there was something  
22 else on the document at the time you reviewed it?

23 A. I already testified to that, that the bottom  
24 portion of the form, probably two and a half inches, is  
25 missing. There should be one more entry for a rule

1 violation in 2002 relating to switching.

2 Q. So at the time you saw the document, in addition  
3 to what you had earlier testified to, it also had some  
4 more information on it that is apparently missing from  
5 this document, correct?

6 A. That is correct. Do you want me to go to six?

7 Q. Sure. Take a look at six, and let us know when  
8 you have finished reviewing it.

9 MS. PRICE: I'm sorry. Mark the record,  
10 please.

11 Counsel, this document that the witness is saying  
12 apparently has been redacted in some way, can we get  
13 the actual document that has all of the information in  
14 it?

15 MS. MAYLIN: Oh, it's in the document  
16 production, Pam.

17 MS. PRICE: This is what I got.

18 MS. MAYLIN: Well, you know, I'm a little  
19 curious about that, because the Deely Exhibit 5 doesn't  
20 have a Bates number on it.

21 MS. PRICE: I'm aware of that. We got  
22 documents without Bates numbers. That's a problem.  
23 That was a problem a long time ago.

24 MS. MAYLIN: You know what, actually, you  
25 got our MSJ papers last night. We have that.

1 Q. You didn't look at Exhibit 6 before the break, did  
2 you?

3 A. No, ma'am.

4 Q. When is the last time you saw Exhibit 6?

5 A. I couldn't tell you.

6 Q. Is it attached to your declaration, as far as you  
7 know?

8 A. I don't recall.

9 Q. You made some reference that you thought there was  
10 some type of pattern to Mr. Campbell's rule violations;  
11 do you recall that testimony?

12 A. Yes, ma'am.

13 Q. What do you mean by that?

14 A. Well, if you take -- on this Exhibit 6, it shows  
15 7.1, switching safely, 7.3, switching precautions, 7.5,  
16 testing hand brakes, 7.6, securing cars and engines,  
17 even on January 14, '02, the same reference for  
18 switching safely, 7.1, 7.4, precautions for coupling  
19 moving cars or engines, and 7.12, movements into spur  
20 tracks. Basically, all the seven rules have to do with  
21 switching.

22 Q. What percentage of Mr. Campbell's job as a  
23 conductor involved switching?

24 A. I couldn't really break it down into a percentage.

25 Q. Why not?

1 A. I would have to know what he did for a long period  
2 of time to get some kind of feel for what the  
3 percentage is.

4 Q. You don't know what Mr. Campbell's job  
5 responsibilities were from 2000 up until the time you  
6 terminated him?

7 A. No, ma'am.

8 Q. Did you look at his personnel file?

9 A. No, ma'am.

10 Q. Do you have some general understanding of what a  
11 yard conductor does?

12 A. Well, I have an understanding of what a conductor  
13 does. There's no differential between a yard conductor  
14 and a road conductor; they all have seniority. They  
15 can work back and forth and quite often do.

16 Q. Do you know if Mr. Campbell worked as a road  
17 conductor for Amtrak?

18 A. He was hired to do that. I don't know, no.

19 Q. Do you know where he was assigned during the  
20 period of his employment?

21 A. The whole time, no.

22 Q. Do you have any knowledge of him being assigned to  
23 San Francisco?

24 A. No.

25 Q. Are you familiar with something called the



1 President's Award within Amtrak?

2 A. Yes.

3 Q. What is that?

4 A. An award that's given out yearly to employees that  
5 are chosen for, I believe it's five different  
6 categories, valor, safety, sustained excellence, and I  
7 can't remember the other two.

8 Q. Do you know if Mr. Campbell was ever nominated for  
9 the President's Award?

10 A. No, I don't.

11 Q. If an employee under your supervision is nominated  
12 for the employee's award, does somebody normally tell  
13 you about that?

14 A. When they are nominated or when they have been  
15 selected for the award?

16 Q. When they are nominated.

17 A. No. It's a committee, and I've never been on the  
18 committee.

19 Q. I'm sorry. You have no information or knowledge  
20 of Mr. Campbell being assigned to the San Francisco  
21 yard?

22 A. No.

23 Q. You have no information or knowledge of  
24 Mr. Campbell's functions in the Oakland yard; is that  
25 correct?

1     A.     That is correct.

2     Q.     Other than these switching violations that you  
3     referenced, correct?

4     A.     Yes.  As I said, when we hire someone as a  
5     conductor, we don't hire them specifically as a yard  
6     conductor or a road conductor; we just hire them as a  
7     conductor.  Where they elect to work is based on their  
8     seniority and if they have enough seniority to go on a  
9     particular job, be it the road or yard, that's entirely  
10    up to them.

11    Q.     You don't recall anyone ever telling you anything  
12    about John Campbell's service in the Oakland yard?

13    A.     No.

14    Q.     Do you have any way of keeping track of the  
15    assignments of the various employees who work for you?

16    A.     No.  I have 531 employees, and that's not my  
17    responsibility, to keep track of their daily  
18    assignments.

19    Q.     Whose responsibility is it --

20    A.     Well --

21    Q.     -- if anyone?

22    A.     We have what they call organizational charts.  
23    They break down the management hierarchy (from, in my  
24    case, Joe Deely, the four superintendents under him,  
25    then it goes to each manager, who has an accountability

1 A. The temporary one?

2 Q. Yes.

3 A. I believe it was probably about four to six  
4 months.

5 Q. Who else was there, in addition to Mr. Deely?

6 A. It was a huge office. I could not tell you all  
7 the people. There were probably 20 people there or  
8 more.

9 MS. PRICE: Mark the record, please.

10 Q. Are you familiar with a conductor named  
11 Christopher Clipper?

12 A. I've heard the name.

13 Q. Do you recall in what context you heard the name?

14 A. No.

15 Q. Do you have any information regarding  
16 Mr. Clipper's discrimination claim?

17 A. No.

18 Q. Are you familiar with Dave West?

19 A. Yes.

20 Q. Who is he?

21 A. He's currently a student engineer.

22 Q. Did you play any role in his selection to the  
23 position of student engineer?

24 A. No.

25 Q. Since March 2004, how do you normally communicate

1 with Mr. Deely?

2 A. Every morning at 7:45, we have a morning call to  
3 go over the previous day's operations. It's on the  
4 telephone, teleconference.

5 Q. Do you recall any telephone conference that you  
6 had with Mr. Deely since March 2004, where  
7 John Campbell's name was brought up?

8 A. Not on a teleconference, no.

9 Q. Do you recall any telephone conference with  
10 Mr. Deely where there was any discussion of any of the  
11 employees assigned to the Oakland yard?

12 A. No.

13 Q. In the morning telephone conferences, is there an  
14 agenda at all?

15 A. Yes.

16 Q. Is it in writing?

17 A. I could only speak for myself. Yes, I have forms  
18 that I have made for the information, so that it's very  
19 succinct, and I provide it for the call.

20 Q. This is your own form?

21 A. Yes.

22 Q. Do you provide that form to anyone else?

23 A. No.

24 Q. Do you receive any agenda information from  
25 Mr. Deely?

1 A. No.

2 Q. What does your form include, what topics,  
3 generally?

4 A. It starts off with if we have any rule violations  
5 for the month, if we have any injuries for the month --  
6 excuse me, the previous day, if we have any passenger  
7 injuries for the previous day.

8 Then I segway into any initial delays on the  
9 different train services. Then I go to the end point  
10 delays. Then I go into the reasons for, if we had end  
11 point delays and/or initials, and then I go to the  
12 current train status of all the trains that are out  
13 there currently running, and any unusual things that  
14 may have happened the previous day that I feel Joe  
15 needs to be aware of -- generally mechanically-related.

16 Q. When you say your list includes rule violations,  
17 what does that typically include?

18 A. Amtrak has what they consider major rule  
19 violations. I believe there's eleven categories. Some  
20 examples would be a red signal violation, speeding,  
21 improper use of the brakes, an authority issue, damage  
22 to equipment, and those are considered major rule  
23 violations within the corporation.

24 There's a monthly or weekly log put out that lets  
25 every division and every district know where they stand

1 as far as their current rule violations for the fiscal  
2 year. Those are the ones we bring up.

3 Q. How do you find that information out? Where do  
4 you get the information from to give to him?

5 A. One of my supervisors. Any of my supervisors, I  
6 should say.

7 Q. Do you recall any supervisor making you aware of  
8 the alleged rule violation by John Campbell in July  
9 2004?

10 A. No. I don't recall that far back.

11 Q. Do you write down the rule violations that you are  
12 going to alert Mr. Deely to?

13 A. Yes. My form has, on the top, "Rules, Safety,"  
14 and it would have one rule violation, if that was the  
15 case. So yes, I do write it down.

16 Q. Would it identify where or when the rule violation  
17 took place?

18 A. It wouldn't be written down. I would verbally  
19 address it.

20 Q. When you say you would verbally address it, what  
21 do you mean by that?

22 A. I would go into particulars and say it was a red  
23 signal violation. I would say where it occurred, when  
24 it occurred, how it occurred, the weather conditions,  
25 the crews' status, all -- everything I knew about it at

1 that point.

2 Q. Where would you get your information from?

3 A. Generally, from the front-line supervisor, as well  
4 as the host railroad.

5 Q. How would you normally receive the information?

6 A. Generally, a telephone conversation.

7 Q. What positions typically participate in that  
8 telephone conference?

9 A. Well, the known participants would be Mr. Deely,  
10 the four assistant superintendents, our manager from  
11 our operations center. But quite honestly, sometimes  
12 there's more than that on there that I couldn't  
13 identify.

14 Q. What do you mean by that?

15 A. When the call is over, as people disconnect, a  
16 beep comes on the call, and sometimes I hear more beeps  
17 than the amount of people that I had communicated with  
18 during the call or heard talk.

19 Q. So there are people on the line sometimes that you  
20 don't have any idea who they are or what position they  
21 hold?

22 A. Correct.

23 Q. Have you ever spoken to Mr. Deely about that?

24 A. No.

25 Q. Why not?

1 A. That they deal with disputes, try to resolve them,  
2 and it's all confidential. They don't share it with  
3 me.

4 Q. Are you aware of any attempt between February  
5 and -- say at any time in 2004 -- to resolve the  
6 discrimination claims of either John Campbell or  
7 Christopher Clipper?

8 A. No.

9 Q. Are you aware of any investigation of  
10 John Campbell's discrimination claim by Amtrak between  
11 February 2004 and June 2004?

12 A. No, ma'am.

13 Q. Are you aware of any investigation of  
14 Mr. Clipper's discrimination claim within Amtrak  
15 between February 2004 and June 2004?

16 MS. MAYLIN: I need to interpose an  
17 objection. It's not reasonably calculated to lead to  
18 the discovery of admissible evidence.

19 Go ahead.

20 THE WITNESS: No, ma'am.

21 MS. PRICE: Q. At any time prior to  
22 today, were you aware there were at least two EEO  
23 claims of racial discrimination in promotions arising  
24 out of your division in 2004?

25 A. No, ma'am.



1 Q. Do you have someone on your staff that  
2 investigates claims of discrimination?

3 A. No. It comes through this department.

4 Q. "This department," being what department?

5 A. The EEOC or the DRO.

6 Q. When you say the EEOC, you mean some EEO  
7 department within Amtrak?

8 A. Correct.

9 Q. Is there any policy or procedure that you are  
10 aware of within Amtrak that requires them to contact  
11 the business people who are involved in claims of  
12 discrimination as part of their investigation?

13 MS. MAYLIN: Lack of foundation. Calls  
14 for speculation.

15 THE WITNESS: I'm not aware of that policy.

16 MS. PRICE: Q. When people who report to  
17 you are accused of discrimination, is there any  
18 practice or procedure or policy to notify you of those  
19 claims?

20 MS. MAYLIN: Calls for speculation.

21 THE WITNESS: No. I'm not aware. I would  
22 assume -- Actually, I shouldn't say that. I think the  
23 process would be if the claim was validated, then it  
24 would come to either myself or possibly Joe to handle  
25 the employee.

1 MS. PRICE: Q. What do you mean,  
2 "validated"?

3 A. If the claim was validated.

4 Q. I don't know what you mean by that. Can you  
5 explain to us what you mean by "validated"?

6 A. If they felt, the department that investigated,  
7 that there had been some wrongness done, it would  
8 probably go to another level within the department the  
9 employee works for.

10 Q. Are you speculating or imagining this, or do you  
11 have some personal knowledge of a rule, practice or  
12 procedure?

13 A. No, I have no personal knowledge.

14 Q. So that's okay. We don't want to have you telling  
15 us maybe it might happen.

16 A. Okay.

17 Q. Tell us what you know, okay?

18 A. I know of no policy.

19 Q. What about a practice or procedure whereby --

20 A. I know of no --

21 MS. MAYLIN: Let her finish, even though  
22 you know where she's going.

23 MS. PRICE: Q. Yes, I mean, are you  
24 aware of any practice or procedure whereby the  
25 department whose managers are accused of discrimination

1 is advised of those accusations?

2 A. No.

3 Q. During the time you have been a manager in the  
4 Oakland facility, have you been asked to take any  
5 action in response to any allegations of racial  
6 discrimination within the Oakland yard?

7 A. No.

8 Q. In May of 2004, were you aware of an employee  
9 named Lorraine Vanderstreik who worked out of Oakland?

10 A. I know Lorraine, yes.

11 Q. How did you know her?

12 A. She's in the mechanical department, and when we  
13 have mechanical issues, I sometimes interact with her.

14 Q. Who does she report to?

15 A. Currently, the job is open. The person that's  
16 filling in right now is Chuck Flynn.

17 Q. In 2004, who did she report to? I don't need the  
18 name, just the position.

19 A. Superintendent.

20 Q. Of what?

21 A. The mechanical department.

22 Q. In 2004, who was the superintendent of the  
23 mechanical department?

24 A. I'm not positive, but I believe it was  
25 Steve Green.

1 Q. Having reviewed the two letters sent to the EEOC  
2 on behalf of Amtrak, do you have any knowledge of where  
3 the information that's included in those letters came  
4 from?

5 A. No.

6 Q. You indicate that you've participated in a morning  
7 conference with Mr. Deely since 2004, correct?

8 A. Yes.

9 Q. On any morning conference that you have been  
10 involved in with Mr. Deely, has there ever been a  
11 discussion of any EEO complaints within the company?

12 A. No.

13 Q. Do you know why not?

14 MS. MAYLIN: Argumentative.

15 THE WITNESS: No.

16 MS. PRICE: Q. Is there any particular  
17 reason that you all don't discuss EEO matters?

18 MS. MAYLIN: Asked and answered.  
19 Argumentative.

20 MS. PRICE: Q. That you know of?

21 A. The calls are to do with operations, the  
22 day-to-day operations of the trains.

23 Q. Any other reason why the managers who report to  
24 Mr. Deely don't discuss EEO matters?

25 A. The calls are for the operations of the previous

1 A. Not to my recollection.

2 Q. Did you ever have a discussion about this event  
3 for which Mr. Campbell was terminated with Earl Friend?

4 A. Not to my recollection.

5 Q. At the time you were reviewing Mr. Campbell's  
6 results of Amtrak's hearing and the disciplinary  
7 assessment worksheet, did you consider any alternative  
8 forms of discipline to termination?

9 A. No, ma'am.

10 Q. Why not?

11 A. As I indicated earlier, the theme seemed to be  
12 safety-related switching, which, in our industry, we  
13 have a thing called SOFA; it's a safety analysis of  
14 fatalities in the industry, and working in the yard is  
15 a very dangerous place, and lots of people die each  
16 year, and we consider it very serious.

17 Q. How did you know Mr. Campbell was working in the  
18 yard?

19 A. I read the transcript.

20 Q. Did you know how long he'd been working in the  
21 yard at the time you made the decision to terminate  
22 him?

23 A. No, ma'am.

24 Q. Any other reason?

25 A. Could you ask the question again?

1 Q. Sure. Any other reason why you did not consider  
2 any alternative forms of discipline, alternative to  
3 termination, at the time that you decided to fire  
4 Mr. Campbell?

5 A. The reasons were, as I stated, basically they were  
6 incidents involving critical safety situations,  
7 primarily switching of equipment, and we don't want to  
8 have a catastrophe or disaster on the property.

9 Q. Any other reasons?

10 A. No.

11 Q. Let me direct your attention to Exhibit 5.

12 The record should reflect we've had a discussion  
13 off the record where Counsel has apparently confirmed  
14 that the document we have marked as Exhibit No. 5 is  
15 the only document produced by Amtrak or, apparently, in  
16 its possession at this time.

17 MS. MAYLIN: No. Actually, what I said,  
18 Pam, is that our records reflect that this is what we  
19 have, and this is what we produced to you.

20 I can tell you that in the short break that we  
21 had, I have not had somebody go through the thousands  
22 of documents that we produced. But what we can tell  
23 you is that, yes, we did produce this in this form, and  
24 as I sit here now, I can't tell you that we produced  
25 another form.

1           MS. PRICE:                   Well, my assertion was that  
2           you have not produced another form, and I asked you to  
3           try to find out if you could get the original one. So  
4           I'm sorry if I misstated the results of your inquiry,  
5           but for the record right now, this is all we have,  
6           which is Exhibit 5, which this witness has testified is  
7           incomplete.

8           So I'm forced to examine him on incomplete  
9           documents, and I'll move to exclude a lot of stuff,  
10          unless I have the actual document and the information  
11          that relates to that document prior to trial.

12          Q.    So Mr. Shelton, directing your attention to  
13          Exhibit 5 again, under "Discipline History, Previous  
14          Discipline," you testified you don't know why that  
15          discipline assessment was waived, correct?

16          A.    Correct.

17          Q.    But you believe that the charges in 2000  
18          constituted a, quote, "serious violation"; is that your  
19          testimony?

20          A.    Correct.

21          Q.    Your declaration in support of Amtrak's Motion for  
22          Summary Judgment talks about a major violation. Do you  
23          recall that?

24          A.    I don't recall if it was "major" or "serious."

25          Q.    I'll represent to you it was "major." I can show

1 THE WITNESS:  
2 something in here?

Can I make reference to

3 MS. PRICE: Q. It's a true or false  
4 question. I'm not sure what "something in here" is.  
5 What are you referring to?

6 MS. MAYLIN: You can answer as you like,  
7 Mr. Shelton. Go ahead.

8 MS. PRICE: Q. Well, if you have to  
9 refer to something, you have to identify it for the  
10 record.

11 So do you understand the question?

12 A. Perhaps not.

13 MS. PRICE: Can you read it back again,  
14 please?

15 (Record read by reporter:

16 "Q. Is it also true that you felt that the  
17 decision of the hearing officer that Mr. Campbell had  
18 not violated 7.1 in July of 2004 was not significant to  
19 this pattern that you felt existed?")

20 THE WITNESS: True.

21 MS. PRICE: Q. One of the rule  
22 violations, charge number one -- I want to direct your  
23 attention back to the document I handed you.

24 Do you have charge number one there?

25 MS. MAYLIN: She's talking about this one



1 (indicating).

2 THE WITNESS:

Yes, I do.

3 MS. PRICE:

4 Q. Are you familiar with

that charge?

5 A. Yes, I am.

6 Q. Is that considered a serious violation?

7 A. Yes, it is.

8 Q. Is it considered a major violation?

9 A. It's considered a serious violation.

10 Q. And are you aware of any action that was taken  
11 against the engineer who participated in this event in  
12 response to this serious violation?

13 A. I have no knowledge of that.

14 Q. Did you inquire as to why the engineer was not  
15 charged with this violation, given the seriousness that  
16 you believe it had?

17 A. No, I didn't.

18 Q. Are you aware of any charges being brought against  
19 the assistant conductor who was involved in this  
20 incident for the violation of charge number one, the  
21 coupling and uncoupling of engines or cars?

22 A. No, I'm not.

23 Q. Did you inquire as to whether this charge was also  
24 being brought against the assistant conductor?

25 A. No, I didn't.

1 Q. Was it your understanding in 2004 that this charge  
2 number one, this rule applied to all of the crew  
3 members or only the conductor?

4 A. The rules apply to all the employees.

5 Q. Do you have any explanation as to why only  
6 Mr. Campbell was charged with charge number one?

7 MS. MAYLIN: Lack of foundation.

8 THE WITNESS: No, I don't.

9 MS. PRICE: Q. Were you aware that he  
10 was not the only crew member involved in the incident  
11 at the time that you made your decision to terminate  
12 him?

13 A. No, I wasn't.

14 Q. Directing your attention to charge number three,  
15 you relied upon this charge, as well, to terminate  
16 Mr. Campbell?

17 A. Yes.

18 Q. That's not part of the seven series that you  
19 described earlier, is it?

20 A. What the corporation considers major rule  
21 violations is this part of the seven that we --

22 Q. No.

23 Can you read it back, please?

24 (Record read by reporter:

25 "Q. That's not part of the seven series that you

described earlier, is it?")

THE WITNESS: No, it's not.

MS. PRICE: Q. Was it your understanding  
at the time that you terminated Mr. Campbell that rule  
1.47 only applied to conductors?

A. No.

Q. Did you determine whether or not this charge was  
brought against the other crew members involved in the  
incident on July 24, 2004?

A. No.

Q. Why not?

A. My part of the process is not to dissect the  
decision that has been rendered by the hearing officer.  
My role is to assess discipline.

Q. Did you consider a violation of rule 1.47 to be a  
serious safety violation?

A. Yes.

Q. Did you consider it to be a major safety  
violation?

A. No.

(Interruption in the deposition.)

MS. PRICE: All right. Off the record.  
I believe this is the judge.

(Discussion off the record.)

(Record read by reporter:

1 person you identified?

2 A. No.

3 Q. You say Mr. Barnes was telling the company that.  
4 Did he tell you that he had not told the engineer to  
5 vacate the train?

6 A. No. He told whoever was doing the investigation.

7 Q. Who was that person?

8 A. I can't remember.

9 Q. Was it someone that worked for you?

10 A. Not directly, no. It would have been a front-line  
11 supervisor, a road foreman, but I don't recall who.  
12 There was about a two-year period where we were  
13 changing road foremen pretty regularly, and I don't  
14 remember who was in charge on that date.

15 Q. Was this person who said that Mr. Barnes said that  
16 someone that you believed to be more credible than  
17 Mr. Barnes?

18 A. I can't answer that.

19 Q. Why not?

20 A. Because I can't remember who the individual was.

21 Q. Mr. Shelton, I'm going to show you what has been  
22 submitted to the court as Exhibit A to your Declaration  
23 in support of the company's motion for summary  
24 judgment.

25 If you could take a look at that. Let us know

1 when you finish reviewing it.

2 A. Yes.

3 Q. This document which you identified as pertaining  
4 to discipline and investigation, on the first page,  
5 under section b, it talks about a major offense.

6 Do you see that?

7 A. Yes, I do.

8 Q. Were any of the charges that Mr. Campbell was  
9 charged with considered, quote, "major offenses"?

10 A. Under the guidelines of Rule 25 of the union  
11 contract?

12 Q. Yeah, Exhibit A.

13 A. No.

14 Q. Is there some other section that you are aware  
15 of -- Well, let me show you Exhibit B to your  
16 declaration.

17 We will mark these 38 and 39.

18 (PLAINTIFF'S EXHIBIT NOS. 38 AND 39 WERE  
19 MARKED FOR IDENTIFICATION.)

20 MS. PRICE: Q. Do you recognize

21 Exhibit 39, Exhibit B?

22 A. Yes.

23 Q. This is an Amtrak disciplinary guideline, correct?

24 A. Yes.

25 Q. Does this guideline define what is a serious

1 MS. PRICE: We can mark it as an exhibit.

2 MS. MAYLIN: Good.

3 MS. PRICE: Q. Do you understand the  
4 question, Mr. Shelton?

5 A. Yes, I do.

6 Q. Can you answer the question, please?

7 A. My role is to evaluate the information that has  
8 already been gone through, the process of an  
9 investigation, a hearing officer, a charging officer,  
10 to determine guilt or innocence, and at that point, I  
11 assess discipline.

12 Q. Who investigated Anthony Guillard's role in this  
13 incident?

14 A. I don't know.

15 MS. MAYLIN: Asked and answered. Lack of  
16 foundation.

17 MS. PRICE: Q. Who normally would do  
18 that --

19 MS. MAYLIN: Lack of foundation.

20 MS. PRICE: Q. -- if anyone?

21 A. The front-line supervisor.

22 Q. Who was that in July 2004?

23 A. I don't know.

24 Q. Was it Tim Sheridan?

25 A. I don't know.

1 specifics of when I did and didn't.

2 Q. Did you ever talk to anyone in labor relations  
3 about why you receive notices of investigation?

4 A. No. It's company policy.

5 Q. Did you ever talk to Joe Deely about why you  
6 receive notices of investigation?

7 A. No.

8 Q. In the morning meetings, I believe you testified  
9 there's no discussion of EEO matters. Is there any  
10 discussion of charges being brought against employees?

11 A. Yes.

12 Q. In what context?

13 A. If there was a rule violation, that would be  
14 brought up in the call. As I told you earlier, the  
15 first thing we start with is the rule violations for  
16 the month, and if there was a current one just pending  
17 investigation, Joe would ask where it's going, who is  
18 involved, what is the host railroad's take. There  
19 would be questions like that.

20 Q. Did you ever communicate with Tim Sheridan  
21 regarding notices of investigations that he issued and  
22 sent to you?

23 A. I don't recall.

24 Q. Now that we know that Tim Sheridan is the one that  
25 issued the notice of formal investigation and you have

1 the counseling portion, item one and two, verbal or  
2 written warning, the reason they are both in there is  
3 because the UTU contract allows for a written warning  
4 letter of counseling; the BLET contract does not, and  
5 I believe there's other contracts that don't either.

6 Generally, the first session, the counseling,  
7 could be either/or. The second one would be the second  
8 rule violation, which would be item three, reprimand or  
9 suspension of three days or less, and four would be ten  
10 days or less, a more serious violation.

11 MS. PRICE: Q. So directing your  
12 attention, then, to Exhibit 6 to Mr. Deely's deposition  
13 transcript, which is your termination letter to  
14 Mr. Campbell, can you tell us why the second offense or  
15 the second discipline imposed on Mr. Campbell was not a  
16 reprimand or a suspension of three days or less?

17 A. It was suspension of ten days.

18 Q. Yeah. Right. My question was a little different.  
19 I'm not sure if you understood the question. Let me  
20 restate it.

21 Can you tell us why the second offense for  
22 Mr. Campbell, as described in your letter, was not --  
23 the discipline imposed was not a reprimand or a  
24 suspension of less than three days?

25 MS. MAYLIN: Calls for speculation, and



1 also lack of foundation.

2 THE WITNESS: These are the guidelines.

3 MS. MAYLIN: No. No. Steve, what she's  
4 asking -- Look here, she's just asking do you know why  
5 that's what was assessed then, that's all.

6 MS. PRICE: I object to Counsel's  
7 coaching and move to strike her coaching of the  
8 witness.

9 Q. Any other reason why, Mr. Shelton, that you know  
10 of?

11 A. Could you reask the question, please?

12 Q. Sure.

13 Can you tell us, is there any other reason, other  
14 than what you have just testified to, why the  
15 discipline imposed on Mr. Campbell for the second  
16 offense, as described in your letter, was not a  
17 reprimand or a suspension of less than three days?

18 MS. MAYLIN: Calls for speculation.

19 MS. PRICE: Q. Any reason other than  
20 what you just told us?

21 A. No.

22 Q. Is it true, when you say that these are just  
23 guidelines, that the management who is responsible for  
24 enforcing these guidelines -- as a manager, that you  
25 are expected to use some discretion in enforcing the

1 guidelines?

2 A. Yes.

3 Q. In your decision to terminate Mr. Campbell in July  
4 2004, did you exercise your discretion?

5 A. Yes.

6 Q. Did you consider, in the exercise of your  
7 discretion, that none of the other crew members had  
8 been charged in any way?

9 A. No.

10 Q. Did you consider, in exercising your discretion,  
11 whether any of the other crew members were at fault in  
12 this incident?

13 A. No, because I was confident that decision had been  
14 made early on in the investigation.

15 Q. By whom?

16 A. Whomever was doing the investigation.

17 Q. You had confidence in whomever or in a particular  
18 person?

19 A. Right, a trainmaster or road foreman.

20 Q. Do you know whether or not the other employees  
21 were counseled at all in connection with this incident?

22 MS. MAYLIN: Asked and answered. Calls  
23 for speculation.

24 THE WITNESS: No, I don't.

25 MS. PRICE: Q. Do you know whether this

1 incident was the first time that Mr. Gilliard had had a  
2 problem with coupling an engine?

3 A. No, I don't.

4 Q. Do you know whether or not this was the first time  
5 Mr. Barrows had had a problem with coupling an engine?

6 A. No, I don't.

7 Q. Did you, in the evaluation of the discipline to be  
8 imposed upon any employee, ever contact the hearing  
9 officer to discuss the information that you received in  
10 writing?

11 A. No.

12 Q. Do you ever contact the charging officer?

13 A. No.

14 Q. Have you been able to recall any conversations  
15 that you had with Mr. Barnes regarding Mr. Campbell's  
16 termination?

17 A. No.

18 Q. Have you been able to recall any conversation that  
19 you had with Mr. Skinner regarding Mr. Campbell's  
20 termination?

21 A. No.

22 Q. At the time you terminated Mr. Campbell, did you  
23 know that he was being considered for a promotion to an  
24 engineer position?


25 A. No.

CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter, State of California, hereby certify that the witness in the foregoing deposition was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said caption.

Executed this 13th day of April 2007.

  
DEBORAH A. PIERSON  
CSR No. 7988

PATRICIA CALLAHAN & ASSOCIATES